



INTERAGENCY COOPERATION CONTRACT GLO CONTRACT NO. 10-

This Interagency Cooperation Contract ("Contract") is entered into by and between the Texas General Land Office (GLO) and _____, Vendor ID# _____ ("Receiving Agency"), pursuant to the authority granted by and in compliance with the provisions of "The Interagency Cooperation Act", Sec. 771.001, *et seq.*, Tex. Gov't Code Ann. (Vernon 2004 & Supp. 2006).

I. TERM AND AMOUNT OF CONTRACT

1.01 **Term:** This Contract shall be effective _____ through _____; **HOWEVER**, the Contract shall be extended for each subsequent biennium if the requisite funding is appropriated by the Texas Legislature for the GLO and Receiving Agency for such biennium.

1.02 For and in consideration of the GLO's satisfactory performance under this Contract, the Receiving Agency shall pay to the GLO an amount not to exceed the sum of _____ and no/100 dollars (\$_____.00). However, at any time should the value of the volume(s) of natural gas required by Receiving Agency exceed this amount, Receiving Agency shall propose an amendment to the Contract to reflect the actual value of gas needed for the remainder of the biennium.

II. DEFINITIONS

Certain Defined Terms: Unless the context clearly requires otherwise, the capitalized terms defined below shall have the following meanings:

"Btu" shall mean one (1) british thermal unit.

"Contract Maintenance Fee" shall mean the fee the GLO charges per MMBtu delivered in accordance with 31 Texas Administrative Code §3.31(b)(16)(A) and which is recorded on Exhibit A.

“Early Termination Damages” shall mean the difference between (a) the Fixed Gas Price times the Fixed Gas Volume(s) remaining to be supplied or purchased under this Contract, plus the Index Gas Price times the Index Gas Volume(s) remaining to be supplied or purchased under this Contract and (b) the Market Value of the Fixed Gas Volume(s) and Index Gas Volume(s) remaining to be supplied or purchased under similar circumstances under this Contract.

“Early Termination Date” shall mean the date the Party authorized to do so establishes as the date the Contract terminates upon an Event of Default or the date of written termination notification by either Party that occurs prior to the termination date contemplated under Section 1.01. An Early Termination Date established under Sections 6.02 and 6.03 must be on the first day of a month.

“Event of Default” shall mean that a Party fails to perform any material term or condition of the Contract, provided that such failure is not caused by Force Majeure.

“Fixed Gas Price” shall mean the predetermined price of natural gas per MMBtu recorded on Exhibit A.

“Fixed Gas Volume(s)” shall mean the volume(s) of natural gas designated by Receiving Agency on Exhibit B to be priced at the Fixed Gas Price.

“Force Majeure” shall mean the occurrence of any of the following for the period of time, if any, that the performance by either or both Party’s material obligations under this Contract are actually, materially, or reasonably delayed or prevented thereby: the enactment, imposition, or modification of any applicable law which occurs after the effective date of this Contract; governmental actions, whether federal, state, military or local, or any application of governmental conservation or curtailment rules or regulations; transportation or natural gas supplier strikes, lockouts, or other industrial disturbances; acts of God, terrorism, wars, blockades, insurrections, riots, civil disturbances, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, wash-outs, explosions, nuclear reaction, radiation, or radioactive contamination; accidents to machinery or lines of pipe; production of lines of pipe; imposed, scheduled or unscheduled shutdowns or curtailments of lines of pipe for inspection, testing, maintenance, or repair; or any other occurrence, whether of the kind herein enumerated or otherwise, which is not reasonably within the control of the Party claiming the right to delay performance on account of such occurrence and which is not a result of the negligence, willful misconduct, or actions under the control of, the Party claiming the right to delay performance on account of such occurrence. Force Majeure shall not include fluctuations in the market price for natural gas or System Operating Expenses.

“Full Requirements” shall mean the Receiving Agency’s total natural gas requirements to be used only for operations, which includes providing gas to Receiving Agency’s tenants, if any, at the facilities identified in Exhibit A.

“Gas Daily Price” shall mean the midpoint price stated in the *Platts Daily Price Guide* or successor publication for the applicable Index Gas Price as referenced in Exhibit A.

“Imbalance Costs” shall mean all costs, including mitigation costs, incurred by the GLO for Imbalance Gas, resulting from the GLO’s use of information in Exhibit B or any subsequent amendment(s) thereto.

“Imbalance Gas” shall mean the difference between a Transporter’s receipts and deliveries of natural gas for the complete transportation path of the gas to the Points of Delivery.

“Index Price” shall mean the price posting as first published each month in *Platts Gas Daily* price guide in the section titled “Market Centers,” under the heading and subheading specified in Exhibit A, or in the event such publication is unavailable, a price agreed to by the GLO and Receiving Agency.

“Index Gas Price” shall mean Index Price plus Market Demand Factor.

“Index Gas Volume(s)” shall mean the volume(s) of natural gas designated by Receiving Agency in Exhibit B to be priced at the Index Gas Price, including any amount of natural gas supplied pursuant to Section 4.04.

“LDC” shall mean a local distribution company.

“Market Demand Factor” shall mean an adjustment to the Index Price, as determined by the GLO, to account for market factors, including but not limited to, supply, transportation and imbalance management and aggregation services performed by the GLO.

“Market Value” shall mean any or all of the settlement prices of NYMEX natural gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchase and any other bona fide third-Party offers, all adjusted for the length of term and transportation costs to the Points of Delivery recorded in Exhibit A.

“MMBtu” shall mean one million (1,000,000) Btu’s.

“Monthly Gas Consumption Form” shall mean the form attached hereto as Exhibit B that the Receiving Agency shall submit to the GLO wherein Receiving Agency designates its Monthly Scheduled Quantity.

“Monthly Scheduled Quantity” shall mean the total volume(s) of natural gas consumption per month in MMBtu the Receiving Agency reported on the most recent Exhibit B, filed in accordance with Section 3.03, and which is the amount of natural gas GLO will schedule for delivery to the Receiving Agency for the designated period(s). If no current Exhibit B from the Receiving Agency is on file at the GLO or, if one is filed, does not contain volume(s) of natural gas consumption for a specific time period, the GLO will, in its sole discretion, schedule the volume(s) of natural gas to supply to the Receiving Agency for that period.

“NYMEX” shall mean the New York Mercantile Exchange.

“Party” or “Parties” shall mean the GLO or Receiving Agency individually or collectively as use of the term implies.

“Points of Delivery” shall mean the delivery interconnects more specifically identified in Exhibit A.

“Prior Period Adjustment” shall mean any adjustments, including but not limited to, actual delivered natural gas volumes, meter reading errors, or any other factor(s) which may affect the resulting actual cost of delivered natural gas supplies and other services made to any previous monthly invoice resulting in the actual cost to the Receiving Agency.

“Service Meter” shall mean the instrument for measuring and indicating or recording the volume of natural gas consumed by Receiving Agency.

“Statement of Charges” shall mean the monthly statement summarizing the invoice(s) generated by the GLO for the delivery of natural gas, the balance forward from the preceding billing month and payments received during the current billing month setting out the total amount due by Receiving Agency for the time periods specified therein.

“System Operating Expense(s)” shall mean the cost incurred by the GLO to supply volume(s) of natural gas to the Points of Delivery identified in Exhibit A, and includes but is not limited to, transportation charges, park-and-ride charges, cash outs, fuel charges, meter or metering charges, fees and taxes, including all Imbalance Costs actually incurred or reasonably allocated by the GLO before or after the Points of Delivery. The System Operating Expense(s) may be modified by the GLO to reflect any actual cost increases or decreases to the various cost components comprising the System Operating Expense(s).

“Transporter” shall mean the pipeline company(s) that transports natural gas for the GLO.

III. STATEMENT OF SERVICES TO BE PERFORMED

3.01 **Provision of Natural Gas:** The GLO agrees to sell and the Receiving Agency agrees to buy the Receiving Agency’s Full Requirements of natural gas on the terms and conditions set forth herein; but only insofar as the GLO makes said gas available for sale to the Receiving Agency. If this contract is extended into a new biennium pursuant to Section 1.01, the GLO and the Receiving Agency shall, by written agreement, amend Exhibit A and Exhibit B, otherwise the GLO will, in its sole discretion, schedule the volume(s) of natural gas to supply to the Receiving Agency for that period.

In the event that the amount of natural gas made available to the Receiving Agency by the GLO is inadequate to satisfy the natural gas requirements of Receiving Agency, the Receiving Agency is solely responsible for obtaining any additional natural gas. In such instance, the GLO shall bear no financial responsibility for, or liability relating to, such gas.

3.02 **Use of Natural Gas:** The Receiving Agency agrees that the natural gas purchased under the terms and conditions of this Contract shall be used only for the operational needs of the facilities, which includes providing gas to Receiving Agency's tenants, if any, identified in Exhibit A and may not be resold for any purpose or use whatsoever.

3.03 **Monthly Gas Consumption Form:** Upon execution of the Contract and annually thereafter, or from time to time as changed conditions require, the Receiving Agency shall complete and submit to the GLO a Monthly Gas Consumption Form in accordance with 31 Tex. Admin. Code §8.8.

3.04 **Fixed Gas Volume(s):** The Parties will execute an Exhibit A for purposes of locking in a Fixed Gas Price for the duration of time designated in Exhibit A and will execute an Exhibit B to designate the monthly volume of natural gas to be purchased at the Fixed Gas Price. Exhibit A and Exhibit B shall be amended in accordance with section 3.10.

3.05 **Future Month Quantity Amendments:** In accordance with Section 3.10, volume(s) of natural gas designated to be purchased at the Index Gas Price on the most recent Exhibit B may be amended by execution of Exhibit C (Confirmation Of Amendments to Nominated Gas Volumes) and attaching a revised Exhibit B at any time no less than two (2) weeks prior to the month for which the change is to be effective. The amended Exhibit B volume(s) shall not be effective until the GLO acknowledges its approval in writing.

3.06 **Intra-Month Quantity Amendments:** In order to mitigate the inevitable discrepancies between scheduled volume(s) and actual consumption of natural gas designated at Index Gas Price the Parties agree that the Receiving Agency may amend its scheduled volume(s) at any mutually agreeable time by execution of Exhibit C. The execution of Exhibit C will have the effect of amending Exhibit B; **however, intra-month amended Exhibit B volume(s) are not binding on the GLO.** The GLO will make commercially reasonable attempts to effectuate intra-month scheduled amendments, but makes no guarantee that they can be implemented or that avoidance of Imbalance Costs can be achieved.

3.07 **Imbalance Costs:** The Receiving Agency shall bear all Imbalance Costs.

3.08 **Transportation Agreements:** The Receiving Agency, if necessary, shall enter into separate agreements to transport the volume(s) of natural gas received under this Contract. The Receiving Agency is directly and independently responsible to such Transporter or LDC for all transportation costs from the Points of Delivery to the Service Meter(s) at Receiving Agency's facilities identified in Exhibit A.

3.09 **Title to Gas:** Title to the natural gas, its control and possession, risk of loss, and liability for damages and injuries, shall pass to the Receiving Agency upon delivery of the natural gas to the Service Meter(s) at Receiving Agency's facilities identified in Exhibit A.

3.10 **Exhibit Amendments:** Exhibit A, Exhibit B, and Exhibit C of this Contract may be amended through the mutual agreement of the Parties by the execution of new exhibits signed and dated by both Parties. Receiving Agency hereby expressly grants authority to

(INITIALED BY: ____; ____) or _____
(INITIALED BY: ____; ____) to execute amendments to Exhibit A, Exhibit B, and Exhibit C.

IV. BILLING AND STATEMENT OF CHARGES

4.01 **Billing:** The GLO shall bill the Receiving Agency monthly utilizing a Statement of Charges which shall be delivered via the United States Postal Service, electronic mail, or facsimile at the GLO's option to the Receiving Agency on or before the last working day of the month following the month of delivery.

4.02 **Statement of Charges:** The payment amount in the monthly Statement of Charges will be calculated under one or more of Sections 4.03, 4.04, 4.05 or 4.06 as applicable.

4.03 **Pricing:** The monthly payment amount shall be the total sum of:

- (i) Fixed Gas Volume(s) times the Fixed Gas Price, **WHETHER OR NOT SUCH QUANTITY IS ACTUALLY TAKEN BY THE RECEIVING AGENCY DURING THE MONTH**, plus
- (ii) the product of the month's designated or scheduled Index Gas Volume(s) times the Index Gas Price, plus
- (iii) a positive or negative Prior Period Adjustment reflecting the difference, if any, between the previous month's designated or scheduled Index Gas Volume(s) and the actual Index Gas Volume(s) supplied, plus
- (iv) the Contract Maintenance Fee, plus
- (v) System Operating Expenses, plus
- (vi) any charges incurred under Sections 4.04, 4.05 or 4.06.

4.04 **Default Gas Pricing:** For any month during the term of this Contract for which Exhibit A pricing is not in effect, all natural gas supplied to Receiving Agency will be sold per MMBtu at a price equal to the total sum of: the greater of (i) the first of the month Index Price for the month of flow times 120% or (ii) the average of the Gas Daily Price relative to the referenced Index Price for the month of flow times 120%, plus (a) the Contract Maintenance Fee, and (b) the System Operating Expenses.

4.05 **Excess Usage Pricing:** If the Index Gas Volume(s) of natural gas received by the Receiving Agency exceeds the Monthly Scheduled Quantity of Index Gas Price gas, such excess will be priced as follows:

- (i) if the Transporter utilizes a cash out provision, the actual excess quantity used times the Transporter's cash out contract price plus the associated transportation charges; or

- (ii) if the Transporter does not utilize a cash out provision and the natural gas received by the Receiving Agency exceeds 105 % of the Monthly Scheduled Quantity of Index Gas Volume(s), all volume of natural gas exceeding 100% of the Monthly Scheduled Quantity will be priced at the greater of (a) the first of the month Index Price for the month of flow times 120% or (b) the average of the Gas Daily Price relative to the referenced Index Price for the month of flow times 120%.

4.06 Shortfall Usage Pricing: If the Receiving Agency does not accept delivery of the Monthly Scheduled Quantity of Index Gas Volume(s), the Receiving Agency shall pay the GLO as follows:

- (i) if the Transporter utilizes a cash out provision, the quantity of natural gas not accepted times the positive difference between the Index Gas Price for that particular quantity of natural gas minus the cash out price the Transporter paid the GLO for the Monthly Scheduled Quantity not accepted plus associated transportation charges; or
- (ii) if the Transporter does not utilize a cash out provision and the Receiving Agency does not accept delivery of at least 95% of the Monthly Scheduled Quantity of Index Gas Volume(s), the positive difference between the Index Gas Price for that quantity of natural gas not accepted less the lesser of (a) 80% of the first of month Index Price for the month of flow times the quantity of natural gas not accepted or (b) 80% of the average of the Gas Daily Price for the referenced index for the month of flow times the quantity of natural gas not accepted, plus (c) the actual transportation cost for all scheduled volume(s). For the purposes of subsection (i) and (ii), the phrase “quantity of natural gas not accepted” shall mean the difference in the volume(s) of gas listed on the most recently filed or amended Exhibit B or Exhibit C and the gas actually accepted for the applicable time periods.

4.07 Special Provision for Receiving Agencies receiving gas through the interconnects at the ATMOS Energy Corporation city gate: For the calculations contemplated by subsections (ii) of sections 4.05 and 4.06, the GLO will, for all Receiving Agencies whose Point of Delivery is the ATMOS Energy Corporation city gate, aggregate the Monthly Scheduled Quantity of Index Gas Volume(s) and aggregate the natural gas volumes actually accepted by the Receiving Agency. Any imbalance fee imposed by the GLO will be apportioned among those Receiving Agencies based upon their pro rata contribution to any resulting imbalance. However, in no event will the imbalance fee under this section exceed the imbalance fee for the Receiving Agency on a stand alone basis. The aggregation provided for in this special provision shall apply to other LDC's, provided that the LDC provides an aggregation benefit for public retail customers.

V. PAYMENT FOR SERVICES

Payment Methods and Due Date: PAYMENTS by check, electronic fund transfer or interagency transaction voucher (ITV), unless otherwise agreed, are the only acceptable methods of Payment.

Payment is due no later than thirty (30) calendar days from date of receipt of the Statement of Charges for all undisputed charges. Payment upon receipt of the Statement of Charges after a reasonable process period is encouraged, as the GLO must pay for purchased natural gas by the 25th of the month following the month of delivery. Payments involving ITVs shall be executed according to the guidelines established by Accounting Policy Statement Number 14 (entitled "Interagency Payments and Receipts" in Publication APS-14), or successor guidelines, under the Uniform Statewide Accounting System (Comptroller of Public Accounts, Accounting Policy Statements). ITV payments are to be made to the Texas Education Agency, **VENDOR NUMBER 33173173171000**, using **RTI NUMBER 317001**.

VI. DEFAULT AND TERMINATION

6.01 Early Termination: Subject to payment of Early Termination Damages, either Party may terminate this Contract early by giving at least thirty (30) days written notice to the other Party.

6.02 Early Termination Date: The terminating Party may establish the Early Termination Date. The non-terminating Party shall thereafter determine any Early Termination Damages in a commercially reasonable manner.

6.03 Event of Default Early Termination Date: The non-defaulting Party may establish the Early Termination Date. The non-defaulting Party shall thereafter determine any Early Termination Damages in a commercially reasonable manner.

6.04 Non-Performance due to Force Majeure: Any delays in or failure of performance by either Party, except in respect of the obligation of payments under this Contract, due to Force Majeure shall not constitute an Event of Default. In any such event, the Party claiming Force Majeure shall promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The Party claiming Force Majeure shall, to the extent practical, exercise due diligence to prevent, eliminate, or overcome such Force Majeure event and resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, either Party may terminate this Contract immediately upon written notification to the other Party. Upon such termination, the terminating Party shall be responsible for Early Termination Damages, which shall be due and payable in accordance with Section 6.05 below.

6.05 Early Termination Damages Payment Obligation and Due Date: Early Termination Damages and all previously incurred charges pursuant to this Contract, are due and payable to the non-defaulting or non-terminating Party upon early termination or default. Early Termination Damages are due and payable thirty (30) days after the non-terminating or non-defaulting Party invoices the other Party.

VII. MISCELLANEOUS PROVISIONS

7.01 **Assignment:** Either Party may assign this Contract up on written notice and prior approval of the other Party. Such approval shall not be unreasonably refused.

7.02 **Entire Agreement:** This Contract constitutes the entire agreement of the Parties. No other agreement, statement, or promise that is not contained in this Contract shall be binding except by a subsequent written modification signed by both Parties. The foregoing notwithstanding, the Parties may change non-substantive terms, including but not limited to names, addresses and account numbers, without the approval of the other Party.

7.03 **Compliance with Other Laws:** Incorporated by reference, the same as if specifically written herein, are the rules, regulations, and all other requirements imposed by law, including but not limited to compliance with those pertinent rules and regulations of the State of Texas and those of federal agencies providing funds to the State of Texas, all of which shall apply to the performance of the Parties hereunder.

7.04 **Dispute Resolution:** The Parties agree to use good-faith efforts to decide all questions, difficulties, or disputes of any nature that may arise under or by this Contract. The dispute resolution process in Chapter 2009 and Chapter 2260, Government Code, must, to the extent applicable to this Contract, be used to resolve any dispute, other than a dispute regarding an invoiced amount, arising under this Contract; provided however, that nothing in this paragraph shall preclude either Party from pursuing any remedies as may be available under Texas state law. All disputes arising out of alleged errors in the monthly invoice shall be conducted in accordance with §771.008, Government Code "The Interagency Cooperation Act". This provision shall not apply to any matter with respect to which the GLO or Receiving Agency may make a decision within its sole and complete discretion.

7.05 **Venue:** Venue of any suit brought for breach of this Contract is fixed in any court of competent jurisdiction in Travis County, Texas; provided, however, the foregoing shall not be construed as a waiver of sovereign immunity by the GLO or Receiving Agency.

7.06 **Termination for Non-Appropriation:** This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or the GLO or Receiving Agency in violation of Tex. Const. art. III §49. In compliance with Tex. Const. art. VIII §6, it is understood that all obligations of the GLO and Receiving Agency are subject to the availability of funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the Parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

7.07 **Severability:** Should any one or more provisions of this Contract be held to be void, voidable, or for any reason whatsoever of no force and effect, such provision(s) shall be construed as severable from the remainder of this Contract and shall not affect the validity of all other provisions of this Contract, which shall remain of full force and effect; so long as such severance does not deprive either Party of the benefit of the bargain.

7.08 **Execution:** This Contract shall be executed in multiple originals and/or several counterparts, each of which shall constitute an original. A complete set of said counterparts, when taken together, shall constitute a single instrument.

7.09 **Pipeline Integrity Testing:** During the term of this Contract, if any pipe line used to transport natural gas to the Receiving Agency ceases or interrupts regular operation, to include, but not limited to, inspection, maintenance, testing or repair, as a result of governmental action, order, rule or regulation, any resulting additional costs involved in delivering or providing natural gas under this Contract shall be borne entirely by the Receiving Agency. In such instance the GLO will assist the Receiving Agency in mitigating such additional costs by any operational means reasonably available to the GLO.

7.10 **Exhibits:** Exhibit A, Exhibit B and Exhibit C attached hereto, and any subsequent amendments thereto, are incorporated by reference into this Contract.

7.11 **Continued Obligations:** Notwithstanding any other provision herein to the contrary, the Receiving Agency shall not be relieved of its obligation to make payments due to the GLO for natural gas actually supplied or tendered for delivery to the Points of Delivery set out in Exhibit A and any related expenses or liabilities incurred by the GLO in the performance of this Contract.

VIII. CONTACT INFORMATION

<u>Texas General Land Office</u>	Receiving	<u>Agency</u>
Texas General Land Office	_____	_____
1700 North Congress, Room 840	_____	_____
Austin, TX 78701	_____	_____
512/463-5042 Energy Resources	_____	_____
512/475-1404 Fax	_____	_____

<u>For Notices</u>		<u>For Notices</u>
Attn: Steve Schneider	_____	_____
512/475-3196	_____	_____
steve.schneider@glo.state.tx.us	_____	_____

<u>For Scheduling</u>	For	<u>Scheduling</u>
Attn: Jennie Weidler	_____	_____
512/475-1462	_____	_____
jennie.weidler@glo.state.tx.us	_____	_____

<u>For Payment by ACH with Addenda</u>	For	<u>Invoices</u>
Bank of America	_____	_____
Austin, TX	_____	_____
ABA #111000025 – Acct #6040070607	_____	_____
Details: GLO/Energy Gas	_____	_____

For Payment By Wire
ABA # 114900164
Acct # 463600305

For Payment By Check
Texas General Land Office
Attn: SEMP
P.O. Box 12873
Austin, TX 78711-2873

THE UNDERSIGNED do here by certify that: (1) the services specified above are necessary and essential and are properly within the statutory functions and programs of the affected agencies of state government; (2) the proposed arrangements serve the interest of efficient and economical administration of those agencies; and (3) the services, supplies or materials contracted for are not required by § 21 of Article 16 of the Constitution of Texas to be supplied under contract to the lowest responsible bidder.

THE RECEIVING AGENCY further certifies that it has the authority to enter into this Contract by virtue of the authority granted in S.B. 1, Art. IX, Section 13.03, 79th Legislature, Regular Session, 2005 and the applicable Texas Appropriations Act. **THE GLO** further certifies that it has the authority to enter into this Contract by virtue of the authority granted in §52.133, Tex. Nat. Res. Code (Vernon 2001) and in the applicable Texas Appropriations Act.

GENERAL LAND OFFICE

RECEIVING AGENCY

Larry L. Laine, Chief Clerk

By: _____
Title: _____

Date of execution: _____

Date of execution: _____

S.A. _____
Div. _____
A.G.C. _____
G.C. _____

Form Interagency
12-18-2008